In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 607

PRECISE IMPORTS CORPORATION, ET AL., PETITIONERS,

v.

JOSEPH P. KELLY, ET AL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners imported seven shipments of knives into this country in 1962. The knives had stiletto blades, sharp only at the point, from four and one-half to six and one-half inches long. Upon the filing down of a rough corner of the heel of the blade, and the slight weakening of the restraining spring with a utensil such as an icepick, two simple tasks taking not more than a few minutes, the blades of these knives would open at the flick of a wrist. A knife whose blade opens in such a manner is prohibited from interstate commerce by the

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Switchblade Knife Act, 72 Stat. 562, 15 U.S.C. 1241–1244,[1] as a knife whose blade opens by inertia.

The Collector of Customs for the Port of New York retained several of the knives and released the remainder to petitioners without customs inspection upon the posting of entry bonds.[2] The Collector later ordered redelivery of the released knives on his determination that they violated the Switchblade Knife Act. Petitioners failed to redeliver the knives, and brought this action in the district court against the Collector and Deputy Collector seeking a declaratory judgment that the knives were not switchblade knives within the meaning of the Act, and an injunction pro-

[1] 15 U.S.C. 1241 provides:

(a) The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

(b) The term "switchblade knife" means any knife having a blade which opens automatically—

(1) by hand pressure applied to a button or other device in the handle of the knife, or

(2) by operation of inertia, gravity, or both.

15 U.S.C. 1242 provides:

Whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

15 U.S.C. 1243 and 1244 are not here relevant.

[2] By these bonds, the petitioners agreed to "redeliver * * * to the order of the collector of customs, on demand by him, in accordance with the law and regulations in effect on the date of release of said articles, any and all merchandise found not to comply with the law and regulations governing its admission into the commerce of the United States" (Pet. App. 20).

hibiting the Collector from collecting damages and from taking any adverse action affecting the knives. The United States intervened as a defendant and counterclaimed for liquidated damages for breach of the entry bonds. Petitioners' claim was tried to a jury, the counterclaim to the court without a jury.

As to the petitioners' claim that the knives in question did not violate the Switchblade Knife Act, the jury found that the changes needed to render the operation of the blades automatic were "insignificant", and that one of the primary purposes of the knives was for use as weapons. The district court held, and the court of appeals unanimously agreed, that the need for such insignificant changes did not take the knives in question outside of the ambit of the Act. Both courts also held that the United States was entitled to recover liquidated damages for petitioners' failure to redeliver on demand those knives which had been released on entry bonds, irrespective of whether the Collector's determination of violation of the Act was finally upheld.

1. The determination below that petitioners' knives violated the Switchblade Knife Act is clearly correct. Acceptance of petitioners' argument would allow knives which do not operate as switchblades, but which can quickly and easily be converted into switchblades, to circulate freely in interstate commerce. Obviously, Congress intended no such result—one which would frustate its purpose and permit "facile evasion" of the Act (Pet. App. 16).

The Switchblade Knife Act is a criminal statute being applied here in a civil action. As the court of

appeals stated: "[T]he canon of strict construction does not require that a penal statute be emasculated in disregard of the clear intent of the legislature in enacting it. See, e.g., *United States* v. *Hood*, 343 U.S. 148 (1952); *United States* v. *Giles*, 300 U.S. 41 (1937). * * * Moreover, the requirement in the charge we have approved that the jury must find that one of the primary purposes of a knife is for use as a weapon not only gives effect to the congressional intent to bar from interstate commerce knives which are well adapted only to use as weapons, but also ensures that the nature of a knife which is found under this standard to violate the act will give fair warning that it is a switchblade knife within the meaning of the act" (Pet. App. 16–17).[3] Petitioners have not cited, nor have we found, any decision conflicting with this construction of the Act.

2. There is no greater merit in petitioners' attack upon the holding of the court of appeals that petitioners were liable on the entry bonds for their failure to redeliver the knives (Pet. App. 20). Imported merchandise is released upon entry bond prior to inspection by the customs authorities. The purpose of the bond is to insure that the Collector can inspect the goods at a later date, upon demand for redelivery. The

[3] As pointed out by the court of appeals, the trial judge "charged the jury * * * that it must find that the knives violated the Switchblade Knife Act, despite the stipulation that they did not open automatically upon entry, if it found that they could be made to open automatically by insignificant alterations *and* that one of the primary utilitarian purposes of their design and construction was for use as weapons" (Pet. App. 14–15). That charge was approved, quite properly, by the court below (Pet. App. 15, 17).

Collector may inspect goods entering the country whether or not they are proscribed by statute. As pointed out by the court below: "[T]he clear purpose of the entry bonds is to place Customs, if it demands the return of goods released under the bonds, in as good a position as if it had not released them" (Pet. App. 20–21). Accord, *United States* v. *Daniel F. Young, Inc.*, 46 F. Supp. 373 (S.D.N.Y.), affirmed *per curiam*, 134 F. 2d 413 (C.A. 2). Cf. *United States* v. *Dieckerhoff*, 202 U.S. 302; *United States* v. *Huber*, 41 C.C.P.A. (Customs) 69. Thus, as the court below held, there is an absolute duty to redeliver imported merchandise for inspection upon demand of the Collector. Petitioners admittedly having failed to redeliver the knives upon demand, it necessarily follows that they were liable on the entry bonds.[4]

It is thus respectfully submitted that the petition for certiorari should be denied.

RALPH S. SPRITZER,
Acting Solicitor General.

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[4] Petitioners' other contentions are similarly lacking in merit and were properly rejected by the court below (see Pet. App. 17–19).

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